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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09-983,012	10/18/2001	Annel K. Greene	CXU-335	7750

7590

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EXAMINER

LILLING, HERBERT J

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/983,012

Applicant(s)

GREENE, ANNEL K.

Examiner

HERBERT J LILLING

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-51 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Receipt is acknowledged of the response filed May 06, 2003.

2. As noted by Applicant, this Examiner has made an error in the restriction requirement, which has been corrected as follows:

Claims 1-51 are present in this instant application.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. **Claims 1-19**, drawn to a process for **producing ethanol**, classified in class 435, subclass 161.

Claim **21** will be examined with this invention.

II. **Claim 22**, drawn to a process for producing an **organic acid**, classified in class 435, 136+ depending upon the acid.

III. **Claim 23**, drawn to a process for producing a **vitamin**, classified in class 435, subclass 45+.

IV. **Claims 25, 42 and 43**, drawn to a process for producing a **pigment** from a plant, classified class 424, subclass 725+ depending upon the plant employed.

a. plant other than algae;

b. red algae as noted by **Claim 26**.

V. Claim **27-32** and **44-48**, drawn to a process for producing **hydrocarbon** gas or methane, classified in class 435, subclass 167.

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VI. Claim **40**, drawn to process for producing a beta glucan, classified in class 435, subclass 72 +.

VII. Claim **41**, drawn to a process for producing polyhydroxy [butyrate, valerate] or mixture thereof, classified in Class 435, subclass 135.

Claims **20, 24, 33-39 and 49-51** will be examined with the elected invention, if appropriate, from Groups II-VII.

Essentially, Claims **20, 33-39 and 49-51** may be considered to lack a suitable specific

utility under 35 USC 101. Claims to useful product may be considered to not searchable and

commensurate in scope with the specification. Applicant has an opportunity to elect any of the above Groups for examination.

The inventions are distinct, each from the other because each of the above inventions is drawn to separate and patentably distinct methods. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, have acquired a separate status in the art because of their recognized divergent subject matter and the search required for one invention is not required for the other invention, thusly the restriction for examination purposes as indicated is proper.

4. This application contains claims directed to the following patentably distinct species of the claimed invention:

Whereby the product comprises:

- a. aldehydes;
- b. ketones;
- c. alkanes;
- d. alkynes;
- e. lipids;
- f. peroxides;
- g. pigments.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 20 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is (703) 308-2034** and **Fax Number** is for applications **Before Final** (703) 872-9306 and **After Final** for applications is 703-872-9307 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL
(703) 308-2034
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April 14, 2003



Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1651